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11 Specially Appearing for Defendant  
12 CHARMING SHOPPES OF DELAWARE, INC.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 SHAMEIKA MOODY, as an individual  
and on behalf of others similarly situated,

18 Plaintiff,

19 vs.  
20

21 CHARMING SHOPPES OF  
DELAWARE, INC., a corporation, and  
DOES 1 through 20, inclusive,

22 Defendant.  
23  
24  
25  
26  
27  
28

Case No. C 07-06073 MHP

**DEFENDANT CHARMING SHOPPES OF  
DELAWARE, INC.'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DISMISS FOR  
LACK OF PERSONAL JURISDICTION**

Date: February 11, 2008  
Time: 2:00 p.m.

[Fed. R. Civ. Proc. 12(b)(2)]  
[SPECIAL APPEARANCE ONLY]

1 **I. INTRODUCTION**

2 Plaintiff Shameika Moody (“Plaintiff”) brings this purported class action solely against  
3 Defendant Charming Shoppes of Delaware, Inc., *which has never employed Plaintiff and which*  
4 *has almost no connection with California*, alleging various claims under the California Labor  
5 Code.

6 Defendant Charming Shoppes of Delaware, Inc. (“Defendant”) has minimal contact with  
7 California. Defendant does not have “substantial” or “continuous and systematic” contacts with  
8 California for general personal jurisdiction. Defendant also has not “purposefully availed” itself  
9 of the privileges of doing business in California to establish specific personal jurisdiction. Thus,  
10 the exercise of personal jurisdiction over Defendant would violate federal due process  
11 requirements, and this Court must dismiss this action.<sup>1</sup> Moreover, Plaintiff has filed a state court  
12 class action alleging the same claims as in this case, against the correct defendant, Lane Bryant,  
13 Inc., which employed Plaintiff and has sufficient contacts with California to establish personal  
14 jurisdiction.

15 **II. FACTUAL BACKGROUND**

16 **A. Plaintiff’s Wage and Hour Claims**

17 Plaintiff brings this action on behalf of a purported class of employees who allegedly  
18 worked for Defendant in California from October 11, 2003 through the present. *See* Complaint, ¶  
19 17. Plaintiff worked as an Assistant Store Manager from around November, 2006 through early  
20 July, 2007 at a Lane Bryant retail store in California. *See* Complaint, ¶ 8.

21 The Complaint alleges on behalf of Plaintiff and each of the putative class members the  
22 following wage and hour claims against Defendant: (1) failure to pay overtime wages in violation  
23 of Labor Code Section 1194 and the California Industrial Welfare Commission Wage Orders (*See*

24  
25 <sup>1</sup> Under California’s long-arm statute, both federal and state courts sitting in California “may  
26 exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the  
27 United States.” Cal. Code Civ. Proc. § 410.10; *Zeta-Jones v. The Spice House*, 372 F. Supp. 2d  
28 568, 570 (C.D. Cal. 2005) (“California’s long-arm jurisdictional statute is coextensive with  
federal due process requirements, so that the jurisdictional analysis under state law and federal  
due process are the same.”).

Complaint ¶¶ 30-38); (2) failure to timely pay wages due at termination in violation of Labor Code Sections 201 and 202 and recovery of penalties under Labor Code Section 203 (*See* Complaint ¶¶ 39-43); (3) failure to provide meal periods in violation of California Labor Code Sections 226.7 and Section 11 of the California Industrial Welfare Commission Wage Order No. 7 (*See* Complaint, ¶¶ 44-50); (4) failure to comply with itemized employee wage statement provisions in violation of Labor Code Section 226 (*See* Complaint ¶¶ 51-54); and (5) violation of Business and Professions Code Section 17200, *et seq.* based upon the above alleged violations (*See* Complaint ¶¶ 55-60).

On December 10, 2007, Plaintiff filed a nearly-identical class action complaint in San Francisco Superior Court against Lane Bryant, Inc. (“Lane Bryant”) in *Shameika Moody v. Lane Bryant, Inc.* (Case No. CGC-07-469900). Plaintiff alleges the same five causes of action as she does against Defendant. Declaration of Albert Huang (“Huang Dec.”), ¶ 2. As explained below, Plaintiff was employed by Lane Bryant, and was never employed by Defendant.

**B. Charming Shoppes of Delaware, Inc.**

At all times since at least January 1, 2002, Lane Bryant has owned and operated all Lane Bryant stores in California. Declaration of John J. Sullivan (“Sullivan Dec.”), ¶ 10; Declaration of Anthony Camoratto (“Camoratto Dec.”), ¶ 4. Defendant does not own an interest in Lane Bryant, Inc.; has never employed Plaintiff or anyone else in California; and is not a proper defendant in this action. Sullivan Dec., ¶ 6-8; Camoratto Dec., ¶ 5-6

Defendant is a wholly-owned subsidiary of Charming Shoppes, Inc. (“CSI”) and is incorporated and headquartered in Pennsylvania. Sullivan Dec., ¶ 3. Defendant provides certain shared services to the operating subsidiaries of CSI, including Lane Bryant which operates the Lane Bryant stores and other subsidiaries that operate the Catherines and Fashion Bug retail stores. Sullivan Dec., ¶ 3; Camoratto Dec., ¶ 2. As part of these shared services, Defendant acts as common paymaster for all employees employed in the Lane Bryant stores. In this capacity, since at least January 1, 2002, Defendant has caused all wage payments to be made to the employees of Lane Bryant stores, either by direct deposit from its bank account or through payroll checks drawn by Defendant on its bank account. These wage payments are made from

1 Defendant's bank accounts in Charlotte, North Carolina. Camoratto Dec., ¶¶ 2-3.

2 Defendant has no office, mailing address, telephone listing, hard assets, or bank accounts  
3 in California. Defendant does not engage in any business activities in California apart from  
4 providing certain shared services to other subsidiaries of CSI. Defendant does not solicit  
5 California residents; manufacture, purchase, or sell goods in California; or advertise goods or  
6 services in California. Defendant does not pay taxes in California, with the exception of the  
7 payment of California payroll taxes incident to Defendant acting as a common paymaster for  
8 other subsidiaries of CSI. Defendant does not exert management control over the operations of  
9 other CSI subsidiaries, including but not limited to Lane Bryant. Sullivan Dec., ¶¶ 6-8.

10 Moreover, Defendant does not manage or direct the work of any employees who report to  
11 or are resident in California, including, without limitation, the employees who work in the Lane  
12 Bryant stores. Sullivan Dec., ¶ 8. Defendant does not hire or select these employees and does not  
13 determine the amounts of wages to be paid to these employees. In acting as common paymaster  
14 for employees at the Lane Bryant stores, Defendant only issues wage payments based on the  
15 employee and wage information that is provided to Defendant by Lane Bryant, which owns and  
16 manages those stores. Defendant does not determine, direct, or enforce the policies or practices  
17 of Lane Bryant stores related to compensation, meal periods, or wage statements. Camoratto  
18 Dec., ¶ 6.

### 19 **III. LEGAL ARGUMENT**

#### 20 **A. This Court Cannot Exercise Personal Jurisdiction Over Defendant.**

21 Fundamental precepts of due process require that non-resident defendants have certain  
22 "minimum contacts" with the forum state to ensure that the exercise of either general or specific  
23 personal jurisdiction does not "offend traditional notions of fair play and substantial justice."  
24 *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). The purpose  
25 of the "minimum contacts" test articulated in *International Shoe* is twofold: (1) to protect  
26 defendants against the burdens of litigating in a distant, inconvenient forum; and (2) to ensure that  
27 states do not step beyond the limits of their sovereignty under a federal system of government.  
28 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564 (1980).

1 This Court cannot constitutionally exercise general personal jurisdiction over Defendant.  
 2 As an out-of-state entity with minimal connections to California, Defendant does not have the  
 3 “substantial” or “continuous and systematic” contacts with California necessary to establish  
 4 general personal jurisdiction over it. Furthermore, this Court cannot exercise specific personal  
 5 jurisdiction over Defendant because, again, Defendant has insufficient contacts with California.  
 6 Thus, this Court does not have the constitutional or statutory authority to adjudicate this action as  
 7 to Defendant, and therefore must dismiss this action brought solely against Defendant.

8 1. **No General Personal Jurisdiction Over Defendant Exists.**

9 Defendant does not have contacts with California sufficient to justify the exercise of  
 10 general personal jurisdiction over it. General personal jurisdiction ordinarily exists only if a  
 11 defendant is *domiciled* in the forum state or its activities there are “*substantial, continuous and*  
 12 *systematic.*” *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445, 72 S. Ct. 413, 418  
 13 (1952) (emphasis added); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,  
 14 414-19, 104 S. Ct. 1868, 1872-74 (1984) (finding that defendant did not have the “kind of  
 15 continuous and systematic general business contacts” required to establish general jurisdiction).  
 16 In addition, even if a defendant is found to have engaged in “substantial” or “continuous and  
 17 systematic” activities in the forum state, the exercise of general personal jurisdiction still must be  
 18 determined judicially to be “reasonable” (i.e., that such exercise “comports with fair play and  
 19 substantial justice”). *Amoco Egypt Oil Co. v. Leonis Navigation Co., Inc.*, 1 F.3d 848, 851, fn. 2  
 20 (9th Cir. 1993) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-78, 105 S. Ct. 2174,  
 21 2184-85 (1985)). The level of contact with the forum state necessary to establish general  
 22 personal jurisdiction is “intended to be a fairly high standard” (*Brand v. Menlove Dodge*, 796  
 23 F.2d 1070, 1073 (9th Cir. 1986)) and “requires that the defendant’s contacts be of the sort that  
 24 approximate physical presence.” *Bancroft & Masters, Inc. v. Augusta National, Inc.*, 223 F.3d  
 25 1082, 1086 (9<sup>th</sup> Cir. 2000).

26 As set forth above, Defendant is an out-of-state entity and does not conduct either  
 27 “substantial” or “continuous and systematic” activities in California. Defendant is formed under  
 28 the laws of Pennsylvania and has its principal operations there. Sullivan Dec., ¶ 3. Defendant’s

only contacts with California are the limited services, including payroll duties, that it provides from its locations in other states to other subsidiaries of CSI, including Lane Bryant, Inc., which operates all Lane Bryant stores in California. Sullivan Dec., ¶ 5; Camoratto Dec., ¶ 3, 6.

It is not enough for a defendant to engage in continuous contacts touching the forum state. Rather, the acts must be continuous and *substantial* and “of the sort that approximate physical presence.” *Bancroft*, 223 F.3d at 1085. Defendant clearly lacks an actual physical presence in California. It has no office, employees, or hard assets in the state. Sullivan Dec., ¶ 5. Its limited contacts—implemented from outside the state and limited to providing payroll and other services to other subsidiaries of the corporate parent—are insufficient to “approximate” a physical presence, as is required for general jurisdiction. *Cf. Resolution Trust Corp. v. First of America Bank*, 796 F.Supp. 1333, 1336-37 (C.D. Cal. 1992) (finding that out-of-state bank’s limited financial interaction with California in the form of correspondent relationships with in-state banks for check processing, wire transfers, or similar contacts did not constitute sufficient contacts for personal jurisdiction in California).

## 2. No Specific Personal Jurisdiction Over Defendant Exists.

Plaintiff also cannot establish specific personal jurisdiction over Defendant because it lacks the constitutionally-mandated “minimum contacts” with California required for the exercise of such jurisdiction. Moreover, even if such contacts did exist (which they do not), the claims at issue do not arise out of any activities by Defendant in California.

The Ninth Circuit has established a three-part test to determine if the exercise of specific personal jurisdiction would comport with due process: “(1) the defendant must perform an act or consummate a transaction within the forum, purposefully availing himself of the privilege of conducting activities in the forum and invoking the benefits and protections of its laws; (2) the claim must arise out of or result from the defendant’s forum-related activities; [and] (3) exercise of jurisdiction must be reasonable.” *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 588 (9th Cir. 1993) Plaintiff can make no such showing here.

As established in the supporting Declarations of John J. Sullivan and Anthony Camoratto, Defendant does not directly conduct any business in California – let alone “purposefully avail”

1 itself of the privileges of doing business in California. Rather, Defendant only performs limited  
 2 administrative functions in California for CSI subsidiaries, including Lane Bryant. Sullivan Dec.,  
 3 ¶ 5; Camoratto Dec., ¶ 2-3, 6. Its limited acts do not constitute the transaction of business for  
 4 purposes of exercising personal jurisdiction over Defendant.

5 Even if the first part of the test was met (which it is not), there is no nexus between  
 6 Plaintiff's wage and hour claims and Defendant's limited transactions in California. Plaintiff on  
 7 behalf of a purported class of "non-exempt employees" alleges that her employer (who was Lane  
 8 Bryant, *not* Defendant) failed to pay her and others overtime wages, to pay all final wages upon  
 9 termination, and to provide proper meal periods. *See* Complaint, ¶¶ 33-34, 40-41, 45. These  
 10 claims do not arise out of or result from Defendant's limited administrative task of generating  
 11 Plaintiff's pay checks. Rather, they arise out of alleged policies and practices at Lane Bryant  
 12 retail stores in California. Defendant does not own, operate, control, or manage these stores. The  
 13 Complaint fails to identify any specific person or people whom Defendant employs or employed  
 14 who took, or failed to take, some action leading to the claims at issue. Plaintiff's claims in this  
 15 action do not arise out of any California activities on the part of Defendant. Indeed, Defendant  
 16 does not even have employees in California. Consequently, Plaintiff cannot meet her *prima facie*  
 17 burden of establishing specific personal jurisdiction. *See, e.g., Omeluk v. Langston Slip &*  
 18 *Batbyggeri A/S*, 52 F.3d 267, 272 (9<sup>th</sup> Cir. 1995) (injury to plaintiff would have occurred without  
 19 regard to defendant's contacts with forum state).

20 **B. Plaintiff Has Filed a State Court Class Action Against Her Employer, Lane**  
 21 **Bryant.**

22 Plaintiff apparently recognizes Defendant's lack of sufficient contacts with California  
 23 for the exercise of personal jurisdiction. Plaintiff recently filed a purported state court class  
 24 action alleging the same causes of action against Lane Bryant, which as discussed above  
 25 employed Plaintiff and has owned and operated all Lane Bryant stores in California since at least  
 26 January 1, 2002. Huang Dec., ¶ 2; Sullivan Dec., ¶ 10; Camoratto Dec., ¶ 4. This Court should  
 27 dismiss this action against Defendant for lack of personal jurisdiction. Plaintiff can then proceed  
 28 with the class action she filed against the correct defendant for her wage and hour claims—Lane



1 Bryant, which has sufficient contacts with California for the exercise of personal jurisdiction.

2 **IV. CONCLUSION**

3 Defendant lacks the “substantial” or “systematic and continuous” contacts required to  
4 establish general jurisdiction over them. Further, this Court cannot exercise specific personal  
5 jurisdiction over Defendant because Plaintiff’s wage and hour claims in no way arise out of any  
6 California activities on its part. For these reasons, this Court lacks jurisdiction over Defendant  
7 and therefore must dismiss this action.

8 Dated: January 7, 2008

MORGAN, LEWIS & BOCKIUS LLP

9  
10  
11 By                     /S/                      
12 Albert Huang  
13 Specially Appearing for Defendant  
14 CHARMING SHOPPES OF  
15 DELAWARE, INC.  
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